IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 761 OF 2004

Captain Dinyar P Karai & Ors. ..Applicants.

V/s.

Johan F Serrao & Anr. ..Respondents.

Shri S.B. Keswani with Y.R.Israni for the Applicants.
Mrs. Amy Serrao & Dias for Respondent No.1.
Shri V.B. Konde-Deshmukh, APP for Respondent No.2.

CORAM : A.M.KHANWILKAR, J.
DATED : JANUARY 10, 2005

PC :-

. Heard learned counsel for the parties. In substance, the basis on which the applicant approached the court below for discharge is that entire dispute has occurred at Jamnagar, which is outside the jurisdiction of Mumbai Court. The court below has, however, found that the complainant's case in the complaint as filed, is that the conspiracy was hatched in Mumbai. In other words part of cause of action has arisen within the jurisdiction of Mumbai Court and that is why the complaint as filed can proceed. To get over this finding, counsel for the applicant has relied on the agreement executed between the parties dated 3rd September, 1994. From the agreement, it is

seen that the stamp paper was obtained from Jamnagar and the agreement is purported to be executed at Jamnagar. Besides, it is contended that in the statement as recorded before the concerned police station, no allegation of conspiracy hatched at Mumbai, has been made. On this basis, the learned counsel for the applicant contends that the conclusion reached by the court below cannot be sustained. It is not possible to accept this submission as the complaint as filed clearly alleges that the conspiracy was hatched in Mumbai. The fact that stamp paper was obtained from Jamnagar and purportedly executed at Jamnagar is a matter of evidence. Even the fact that the conspiracy theory has not been referred to in the statement recorded before the police station cannot be the sole basis to interdict stop the trial because the trial court is obliged to go by the complaint as instituted. In the complaint as filed, the theory of conspiracy has been clearly alleged. Whether such allegation can be sustained or not is a matter of evidence and the above ground cannot be the basis for discharge. Hence, rejected.

.....